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Commenter: Hyperion Telecommunications, Inc.
Applicant: BellSouth
State: Louisiana
Date: December 19, 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by BellSouth)
Corporation et al. for Provision of)
In-Region, InterLATA Services in)
Louisiana)

CC Docket No. 97-231

REPLY COMMENTS OF HYPERION TELECOMMUNICATIONS, INC.
IN OPPOSITION TO BELL SOUTH'S APPLICATION FOR
INTERLATA AUTHORITY IN LOUISIANA

Hyperion Telecommunications, Inc. ("Hyperion"), by its undersigned counsel, hereby submits its reply comments on the Section 271 application for in-region interLATA authority in Louisiana filed by BellSouth Corporation et al. ("BellSouth") on November 6, 1997.

- 1. The application must be denied because of BellSouth's refusal to pay reciprocal compensation for calls to information service providers serviced by competing carriers.**

In its initial comments, Hyperion argued that BellSouth's refusal to pay reciprocal compensation for local calls to information service providers, including Internet service providers, who are customers of competing carriers, violates its obligation under item (xiii) of the competitive checklist and thus requires denial of its application. Hyperion Comments at 2-5.

In its comments, the Louisiana Public Service Commission ("LPSC") argues that the Act specifically authorizes bill-and-keep arrangements between carriers, and notes that Louisiana regulations require bill-and-keep methodology as an interim compensation method, pending

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establishment of permanent rates. LPSC Comments at 18-19.

However, whether bill-and-keep is an adequate methodology for calls to information service providers (particularly where Hyperion's interconnection agreement provides for payment of reciprocal compensation -- see Hyperion comments at 3) is beside the point. As the LPSC admits, it has now established permanent rates, so that the interim bill-and-keep provision is no longer applicable. LPSC Comments at 19. The permanent rates include a rate for reciprocal compensation for transport and termination of local calls. Hyperion Comments at 3 n.2. But BellSouth continues to insist that it will not pay reciprocal compensation for local calls to information service providers who are customers of a competing carrier. As explained in Hyperion's initial comments, BellSouth's refusal to pay reciprocal compensation for such calls violates the competitive checklist and requires denial of its application.

2. BellSouth has not shown that it provides nondiscriminatory access to its OSS functions.

In its initial comments, Hyperion argued that BellSouth had failed to present data comparing the average time it takes for its own retail customers to have service installed with the average time taken for competitors' customers, as well as adequate performance data for ordering and provisioning unbundled loops. Hyperion argued that the inadequacy of BellSouth's performance data was particularly damaging in light of the ALJ's finding that BellSouth's OSS performance was discriminatory because its LENS system requires significant manual input, while "many of BellSouth's own operational support systems can communicate with each other, without manual intervention." *Recommended Decision* (August 14, 1997) at 26-27. Hyperion Comments at 5-7. Hyperion argued that the LPSC's reversal of the ALJ was not entitled to

deference, because the LPSC made only a conclusory finding, without explaining its reasoning.

Hyperion Comments at 7-8.

The comments of the LPSC do not adequately respond to the issue of BellSouth's OSS performance. The LPSC points out that three of its Commissioners attended a technical demonstration of OSS performance. LPSC Comments at 28. But the LPSC findings do not explain what aspect of this demonstration (if any) was instrumental in its decision to reverse the ALJ. Nor do the LPSC's comments illuminate this crucial issue. They state that the technical demonstration showed that BellSouth's "OSS systems were fully functional and allowed competitive local exchange carriers . . . to place, confirm, and implement orders to establish and provision local exchange service in Louisiana." LPSC Comments at 28. But this description of the BellSouth demonstration is not only conclusory; it does not even purport to address the crucial discrimination issue. Even if the technical demonstration showed that competitive carriers are "allowed" to "place, confirm, and implement" orders, the issue is whether they can do so as quickly as BellSouth's own representatives. The LPSC does not tell us whether the technical demonstration addressed this crucial issue. Thus we are left completely in the dark as to the basis for the LPSC's conclusory finding, repeated in its comments, that BellSouth's OSS "do, in fact, work and operate to allow potential competitors full nondiscriminatory access to the BellSouth system." LPSC Comments at 28.

The LPSC's failure to explain its decision on OSS is particularly significant in view of the finding of the Florida Public Service Commission that BellSouth's OSS performance is inadequate. The Florida decision was issued November 19, 1997, six days before the LPSC's

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comments were filed, and had been preceded by an order of November 3, 1997, approving a Staff recommendation taking the same position on the OSS issue. In its decision, the Florida Public Service Commission found specifically that "BellSouth does not provide a pre-ordering interface that is integrated with an ordering interface that provides these functions in essentially the same time and manner as BellSouth's internal systems."¹ If the LPSC in fact had a reasoned explanation for reaching the opposite conclusion, it could have provided it in its comments. Its failure to do so further undermines the credibility of its approval of BellSouth's OSS performance.

Respectfully submitted,



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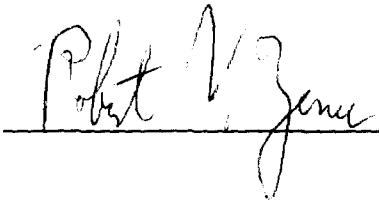
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¹ Florida Public Service Commission, *Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Dkt. 960786-TL (Nov. 19, 1997) at § § VI.B.3.j, VI.M.4. A copy of the relevant portions of the Staff Recommendation, approved by the Florida Commission November 3, 1997, appear as Exhibit 6 to the DOJ Comments in the South Carolina 271 proceeding. The discussion of OSS appears at p. 115 of this Exhibit.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing REPLY COMMENTS OF HYPERION TELECOMMUNICATIONS, INC. IN OPPOSITION TO BELL SOUTH'S APPLICATION FOR INTERLATA AUTHORITY IN LOUISIANA were served to each on the attached mailing list, either by Hand Delivery (as designated with an asterisk(*)), or by First Class Mail, postage prepaid, this 19th day of December 1997.



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